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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAUREEN MAY RALLS,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner
of Social Security,¹

Defendant.

CASE NO. ED CV 18-2197 AS

MEMORANDUM OPINION

AND ORDER OF REMAND

For the reasons discussed below, IT IS HEREBY ORDERED that, pursuant to Sentence Four of 42 U.S.C. § 405(g), this matter is remanded for further administrative action consistent with this Opinion.

PROCEEDINGS

On October 16, 2018, Plaintiff filed a Complaint seeking review of the denial of her application for Disability Insurance

¹ Andrew M. Saul, Commissioner of Social Security, is substituted for his predecessor. See 42 U.S.C. § 405(g); Fed. R. Civ. P. 25(d).

1 Benefits. (Dkt. No. 1). The parties have consented to proceed
2 before the undersigned United States Magistrate Judge. (Dkt. Nos.
3 9-11). On March 25, 2019, Defendant filed an Answer along with
4 the Administrative Record ("AR"). (Dkt. Nos. 17-18). The parties
5 filed a Joint Stipulation ("Joint Stip.") on July 24, 2019, setting
6 forth their respective positions regarding Plaintiff's claims.
7 (Dkt. No. 21).

8 9 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE RECORD**

10
11 On March 28, 2014, Plaintiff filed an application for
12 Disability Insurance Benefits ("DIB") pursuant to Title II of the
13 Social Security Act (the "Act") alleging a disability onset date
14 of September 18, 2008. (AR 83, 172). The Commissioner denied
15 Plaintiff's application initially and on reconsideration. (AR 72-
16 97). On February 28, 2017, Plaintiff, represented by counsel,
17 testified at a hearing before Administrative Law Judge Laura
18 Fernandez (the "ALJ"). (AR 38-71). The ALJ also heard testimony
19 from Gregory S. Jones, an impartial vocational expert ("VE"). (AR
20 64-69; see id. 238-40).

21
22 On July 3, 2017, the ALJ denied Plaintiff's request for
23 benefits. (AR 15-25). Applying the five-step sequential process,
24 the ALJ found at step one that Plaintiff has not engaged in
25 substantial gainful activity from September 18, 2008, her alleged
26 onset date, through December 31, 2013, her date last insured. (AR
27 17). At step two, the ALJ found that through the date last insured,
28 Plaintiff's irritable bowel syndrome, osteoporosis, cervical spine

1 degenerative disc disease, depressive disorder, and anxiety
2 disorder were severe impairments.² (AR 17). At step three, the
3 ALJ determined that through the date last insured, Plaintiff did
4 not have an impairment or combination of impairments that met or
5 medically equaled the severity of any of the listings enumerated
6 in the regulations.³ (AR 18).

7
8 The ALJ then assessed Plaintiff's residual functional capacity
9 ("RFC")⁴ and concluded that through the date last insured, she had
10 the capacity to perform medium work, as defined in 20 C.F.R.
11 § 404.1567(c),⁵ except:

12
13 [Plaintiff] was able to sit, stand, or walk for 6 hours
14 each in an 8-hour day; she was able to engage in frequent
15 postural activities but was limited to occasional
16

17 ² The ALJ found that through the date last insured,
18 Plaintiff's temporomandibular joint disorder did not cause more
19 than a minimal limitation on Plaintiff's ability to perform basic
work activities and is therefore nonsevere. (AR 17-18).

20 ³ Specifically, the ALJ considered whether Plaintiff met
21 the criteria of Listings 1.04 (disorders of the spine), 5.06
22 (inflammatory bowel disease), 5.08 (weight loss due to any
23 digestive disorder), 12.04 (depressive, bipolar and related
disorders), or 12.06 (anxiety and obsessive-compulsive disorders)
and concluded that she did not. (AR 18-19).

24 ⁴ A Residual Functional Capacity ("RFC") is what a claimant
25 can still do despite existing exertional and nonexertional
limitations. See 20 C.F.R. § 404.1545(a)(1).

26 ⁵ "Medium work involves lifting no more than 50 pounds at
27 a time with frequent lifting or carrying of objects weighing up to
28 25 pounds. If someone can do medium work, we determine that he or
she can also do sedentary and light work." 20 C.F.R. § 404.1567(c).

1 climbing of ladders, ropes, or scaffolds; and she was
2 limited to performing simple and routine tasks with only
3 occasional public contact.
4

5 (AR 19). At step four, the ALJ found that through the date last
6 insured, Plaintiff was unable to perform any past relevant work.
7 (AR 23-24). Based on Plaintiff's RFC, age, education, work
8 experience, and the VE's testimony, the ALJ determined at step five
9 that through the date last insured, there were jobs that existed
10 in significant numbers in the national economy that Plaintiff could
11 have performed, including hand packager, laundry laborer, and
12 industrial cleaner. (AR 24-25). Accordingly, the ALJ found that
13 Plaintiff was not under a disability as defined in the Act from
14 September 18, 2008, the alleged onset date, through December 31,
15 2013, the date last insured. (AR 25).
16

17 The Appeals Council denied Plaintiff's request for review on
18 August 30, 2018. (AR 1-6). Plaintiff now seeks judicial review of
19 the ALJ's decision, which stands as the final decision of the
20 Commissioner. 42 U.S.C. §§ 405(g), 1383(c).
21

22 STANDARD OF REVIEW

23

24 This Court reviews the Commissioner's decision to determine
25 if: (1) the Commissioner's findings are supported by substantial
26 evidence; and (2) the Commissioner used proper legal standards. 42
27 U.S.C § 405(g); see Carmickle v. Comm'r, 533 F.3d 1155, 1159 (9th
28 Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007).

1 "Substantial evidence is more than a scintilla, but less than a
2 preponderance." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
3 1998). It is relevant evidence "which a reasonable person might
4 accept as adequate to support a conclusion." Hoopai, 499 F. 3d at
5 1074; Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996). To
6 determine whether substantial evidence supports a finding, "a court
7 must consider the record as a whole, weighing both evidence that
8 supports and evidence that detracts from the [Commissioner's]
9 conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir.
10 2001) (citation omitted); see Widmark v. Barnhart, 454 F.3d 1063,
11 1066 (9th Cir. 2006) (inferences "reasonably drawn from the record"
12 can constitute substantial evidence).

13
14 This Court "may not affirm [the Commissioner's] decision
15 simply by isolating a specific quantum of support evidence, but
16 must also consider evidence that detracts from [the Commissioner's]
17 conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)
18 (citation omitted). However, the Court cannot disturb findings
19 supported by substantial evidence, even though there may exist
20 other evidence supporting Plaintiff's claim. See Torske v.
21 Richardson, 484 F.2d 59, 60 (9th Cir. 1973). "If the evidence can
22 reasonably support either affirming or reversing the
23 [Commissioner's] conclusion, [a] court may not substitute its
24 judgment for that of the [Commissioner]." Reddick, 157 F.3d 715,
25 720-21 (9th Cir. 1998) (citation omitted).

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1 In her decision, the ALJ found that Plaintiff retains the RFC
2 to perform a limited range of medium work. (AR 14). Specifically,
3 through the date last insured, the ALJ concluded that Plaintiff
4 was able to "lift and carry 50 pounds occasionally and 25 pounds
5 frequently; . . . sit, stand, or walk for 6 hours each in an 8-
6 hour day; . . . engage in frequent postural activities but was
7 limited to occasional climbing of ladders, ropes, or scaffolds."
8 (AR 19). Plaintiff contends that the ALJ "selectively utilized
9 medical evidence . . . to support her determination that
10 [Plaintiff] is capable of performing and persisting at medium work
11 activity while simultaneously minimizing or ignoring other evidence
12 which is . . . supportive of Plaintiff's claim of disability."
13 (Joint Stip. at 5; see id. at 8). The Court agrees.

14
15 In determining that Plaintiff was capable of medium work, the
16 ALJ relied exclusively on the opinions of the State agency
17 physicians. (AR 22) (giving "great weight to the medium residual
18 functional capacity assessments from [the] State agency medical
19 consultants"). But the opinions of non-examining physicians, like
20 the State agency medical consultants, may serve as substantial
21 evidence only when their opinions "are consistent with independent
22 clinical findings or other evidence in the record." Thomas v.
23 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); cf. Neugebauer v.
24 Barnhart, 154 F. App'x 649, 650 (9th Cir. 2005) ("the ALJ was free
25 to rely on non-treating agency physician reports that contained
26 specific clinical support"). The State agency medical consultants
27 do not reference any clinical findings or other medical evidence
28 in support of their conclusion that Plaintiff is capable of lifting

1 50 pounds occasionally and 25 pounds frequently. (See generally
2 AR 75-76, 87-88). Indeed, the medical consultants recommended that
3 a consultative examination was necessary "to establish [the]
4 current severity of [Plaintiff's] impairments." (AR 74, 87).
5 While the Agency ordered a complete psychiatric evaluation (AR 694-
6 97), no physical consultative examination was ordered.⁶

7
8 While the ALJ vaguely mentions "consistently normal"
9 musculoskeletal examinations and "minimal symptoms of
10 musculoskeletal pain or limitations" (AR 22), these findings do
11 not establish that a woman over 55 years of age is capable of
12 lifting 50 pounds occasionally and 25 pounds frequently.⁷ Indeed,
13 at least one normative study found that most women over the age of
14 50 are unable to lift more than 40 pounds. Leonard A. Matheson et
15 al., Age and Gender Normative Data for Lift Capacity 265 (2013).⁸
16 A person, like Plaintiff, who suffers from osteoporosis and
17 cervical spinal degenerative disc disease, which the ALJ found were
18 severe impairments, would likely have a strength deficit. Further,
19 throughout the relevant time period, Plaintiff had poor exercise
20 habits (AR 253, 259, 263, 274, 428, 898) and was consistently

21
22 ⁶ While a physical consultative examination would likely
23 have been performed a few months after Plaintiff's date last
24 insured, it still would have provided significant, circumstantial
evidence of Plaintiff's physical impairments prior to her date last
insured.

25 ⁷ Plaintiff turned 55 on July 17, 2013, several months
26 prior to her date last insured. (AR 172).

27 ⁸ A copy of the study is available at <[https://content.
28 iospress.com/download/work/wor01671?id=work%2Fwor01671](https://content.iospress.com/download/work/wor01671?id=work%2Fwor01671)> (last
visited Aug. 8, 2019).

1 overweight (AR 247, 254, 259, 274, 280, 283, 286, 392, 401, 404,
2 406, 408, 425, 433, 893, 898). Indeed, by August 2013, Plaintiff
3 was obese. (AR 909). This evidence, which the ALJ did not discuss,
4 undermines her conclusion that Plaintiff was capable of a medium
5 level of exertion. "[A]n ALJ may not pick and choose evidence
6 unfavorable to the claimant while ignoring evidence favorable to
7 the claimant." Cox v. Colvin, 639 F. App'x 476, 477 (9th Cir.
8 2016) (citing Ghanim v. Colvin, 763 F.3d 1154, 1164 (9th Cir.
9 2014)).

10
11 In sum, the ALJ's RFC assessment is not supported by
12 substantial evidence.⁹ On remand, the ALJ shall consider all
13 relevant evidence in assessing Plaintiff's RFC and in deciding
14 whether Plaintiff truly was capable of medium work.

15
16 **B. The ALJ Failed To Provide Specific, Clear, and Convincing**
17 **Reasons for Rejecting Plaintiff's Subjective Symptom**
18 **Testimony**

19
20 Plaintiff asserts that "[t]he ALJ has simply opted to ignore
21 Plaintiff's subjective statements . . . in order to arrive at her
22 determination that Plaintiff is persisting at medium work
23 activity." (Joint Stip. at 13).

24
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26 _____
27 ⁹ Defendant did not address Plaintiff's argument that the
28 ALJ's physical RFC assessment was not supported by substantial
evidence. (Joint Stip. at 9-12).

1 Plaintiff's testimony indicated an inability to consistently
2 perform at a medium level of exertion. She testified that her
3 husband takes care of most of the household chores, including
4 cleaning, vacuuming, and shopping. (AR 49). On occasion, she is
5 able to lift and carry one or two gallons of milk, but if she
6 overexerts herself, she gets shoulder pain. (AR 54). Once or
7 twice a month, she is able to help her husband bring in the
8 groceries. (AR 55). Plaintiff suffers from severe osteoporosis,
9 and she has trouble with protein absorption and maintaining muscle
10 mass. (AR 47).

11
12 When assessing a claimant's credibility regarding subjective
13 pain or intensity of symptoms, the ALJ must engage in a two-step
14 analysis. Trevizo v. Berryhill, 874 F.3d 664, 678 (9th Cir. 2017).
15 First, the ALJ must determine if there is medical evidence of an
16 impairment that could reasonably produce the symptoms alleged.
17 Garrison v. Colvin, 759 F.3d 995, 1014 (9th Cir. 2014). "In this
18 analysis, the claimant is not required to show that her impairment
19 could reasonably be expected to cause the severity of the symptom
20 she has alleged; she need only show that it could reasonably have
21 caused some degree of the symptom." Id. (emphasis in original)
22 (citation omitted). "Nor must a claimant produce objective medical
23 evidence of the pain or fatigue itself, or the severity thereof."
24 Id. (citation omitted).

25
26 If the claimant satisfies this first step, and there is no
27 evidence of malingering, the ALJ must provide specific, clear and
28 convincing reasons for rejecting the claimant's testimony about

1 the symptom severity. Trevizo, 874 F.3d at 678 (citation omitted);
2 see also Smolen, 80 F.3d at 1284 ("[T]he ALJ may reject the
3 claimant's testimony regarding the severity of her symptoms only
4 if he makes specific findings stating clear and convincing reasons
5 for doing so."); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883
6 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of malingering
7 based on affirmative evidence thereof, he or she may only find an
8 applicant not credible by making specific findings as to
9 credibility and stating clear and convincing reasons for each.").
10 "This is not an easy requirement to meet: The clear and convincing
11 standard is the most demanding required in Social Security cases."
12 Garrison, 759 F.3d at 1015 (citation omitted).

13
14 In discrediting the claimant's subjective symptom testimony,
15 the ALJ may consider the following:

16
17 (1) ordinary techniques of credibility evaluation, such
18 as the claimant's reputation for lying, prior
19 inconsistent statements concerning the symptoms, and
20 other testimony by the claimant that appears less than
21 candid; (2) unexplained or inadequately explained
22 failure to seek treatment or to follow a prescribed
23 course of treatment; and (3) the claimant's daily
24 activities.

25
26 Ghanim, 763 F.3d at 1163 (citation omitted). Inconsistencies
27 between a claimant's testimony and conduct, or internal
28 contradictions in the claimant's testimony, also may be relevant.

1 Burrell v. Colvin, 775 F.3d 1133, 1137 (9th Cir. 2014); Light v.
2 Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997). In addition,
3 the ALJ may consider the observations of treating and examining
4 physicians regarding, among other matters, the functional
5 restrictions caused by the claimant's symptoms. Smolen, 80 F.3d
6 at 1284; accord Burrell, 775 F.3d at 1137. However, it is improper
7 for an ALJ to reject subjective testimony based "solely" on its
8 inconsistencies with the objective medical evidence presented.
9 Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir.
10 2009) (citation omitted).

11
12 Further, the ALJ must make a credibility determination with
13 findings that are "sufficiently specific to permit the court to
14 conclude that the ALJ did not arbitrarily discredit claimant's
15 testimony." Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.
16 2008) (citation omitted); see Brown-Hunter v. Colvin, 806 F.3d 487,
17 493 (9th Cir. 2015) ("A finding that a claimant's testimony is not
18 credible must be sufficiently specific to allow a reviewing court
19 to conclude the adjudicator rejected the claimant's testimony on
20 permissible grounds and did not arbitrarily discredit a claimant's
21 testimony regarding pain.") (citation omitted). Although an ALJ's
22 interpretation of a claimant's testimony may not be the only
23 reasonable one, if it is supported by substantial evidence, "it is
24 not [the court's] role to second-guess it." Rollins v. Massanari,
25 261 F.3d 853, 857 (9th Cir. 2001).

26
27 In rejecting Plaintiff's testimony of exertional limitations,
28 the ALJ acknowledged that Plaintiff has a history of osteoporosis

1 and degenerative changes in the cervical spine with disc space
2 narrowing. (AR 22). Nevertheless, the ALJ emphasized that
3 "musculoskeletal examinations were consistently normal" and
4 Plaintiff "received minimal treatment" for her cervical spine
5 issues. (AR 22). After careful consideration, the Court finds
6 that the ALJ's conclusions are contrary to law and not supported
7 by clear and convincing evidence. See Garrison, 759 F.3d at 1015
8 (The clear and convincing standard is "the most demanding required
9 in Social Security cases" and "is not an easy requirement to meet.")
10 (citation omitted).

11
12 The ALJ's decision is not "sufficiently specific to permit
13 the court to conclude that the ALJ did not arbitrarily discredit
14 claimant's testimony." Tommasetti, 533 F.3d at 1039 (citation
15 omitted). It is not at all clear how normal musculoskeletal
16 examinations and minimal treatment targeting Plaintiff's cervical
17 spine issues undermine Plaintiff's testimony that she can only
18 occasionally lift and carry a gallon or two of milk or bag of
19 groceries. See Brown-Hunter, 806 F.3d at 493 ("The ALJ . . .
20 failed to identify specifically which of Brown-Hunter's statements
21 she found not credible and why."); Knape v. Berryhill, 734 F. App'x
22 500, 501 (9th Cir. 2018) ("The ALJ failed to identify the parts of
23 Knape's mental health symptom testimony he found not credible and
24 failed to provide any links to the record."); Fritz v. Berryhill,
25 685 F. App'x 585, 586 (9th Cir. 2017) ("[T]he ALJ did not identify
26 what testimony was not credible and what evidence undermined
27 Fritz's complaints."). As discussed above, an overweight woman
28 over the age of 55 with severe irritable bowel syndrome,

1 osteoporosis, and cervical spine degenerative disc disease can have
2 unremarkable musculoskeletal examinations and still be unable to
3 perform medium work. The ALJ's cursory discussion of Plaintiff's
4 physical subjective statements "is not the sort of explanation or
5 the kind of 'specific reasons' [this Court] must have in order to
6 review the ALJ's decision meaningfully, so that [the Court] may
7 ensure that the claimant's testimony was not arbitrarily
8 discredited." Brown-Hunter, 806 F.3d at 494. Critically, the ALJ
9 never addressed Plaintiff's testimony that she has trouble with
10 protein absorption and maintaining muscle mass.

11
12 Further, the ALJ's reliance on objective medical evidence is
13 insufficient to undermine Plaintiff's subjective symptom
14 testimony. While inconsistencies with the objective medical
15 evidence can be a factor that the ALJ may consider when evaluating
16 a claimant's credibility, it cannot be the sole ground for
17 rejecting a claimant's subjective testimony. Bray, 554 F.3d at
18 1227; Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005); Rollins,
19 261 F.3d at 857. In any event, the objective evidence cited by
20 the ALJ does not clearly dispute Plaintiff's subjective statements
21 regarding her exertional limitations. For example, as already
22 noted, the ALJ does not clearly and convincingly explain how normal
23 musculoskeletal examinations necessarily translates into the
24 ability to perform medium work.

25
26 In sum, the ALJ failed to provide clear and convincing
27 reasons, supported by substantial evidence, for rejecting
28 Plaintiff's subjective symptoms. The matter is remanded for

1 further proceedings. On remand, the ALJ shall reevaluate
2 Plaintiff's symptoms in accordance with SSR 16-3p, taking into
3 account the full range of medical evidence.

4
5 **C. Remand Is Warranted**

6
7 The decision whether to remand for further proceedings or
8 order an immediate award of benefits is within the district court's
9 discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir.
10 2000). Where no useful purpose would be served by further
11 administrative proceedings, or where the record has been fully
12 developed, it is appropriate to exercise this discretion to direct
13 an immediate award of benefits. Id. at 1179 ("[T]he decision of
14 whether to remand for further proceedings turns upon the likely
15 utility of such proceedings."). However, where, as here, the
16 circumstances of the case suggest that further administrative
17 review could remedy the Commissioner's errors, remand is
18 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);
19 Harman, 211 F.3d at 1179-81; see also Garrison, 759 F.3d at 1020
20 (cautioning that "the credit-as-true rule may not be dispositive
21 of the remand question in all cases"); cf. Treichler v. Comm'r of
22 Soc. Sec. Admin., 775 F.3d 1090, 1105 (9th Cir. 2014) ("[T]he
23 record raises crucial questions as to the extent of Treichler's
24 impairment given inconsistencies between his testimony and the
25 medical evidence in the record. These are exactly the sort of
26 issues that should be remanded to the agency for further
27 proceedings.").

Since the ALJ failed to properly evaluate Plaintiff's RFC, remand is warranted. However, if the ALJ properly demonstrates that Plaintiff was truly capable of lifting and carrying 50 pounds occasionally and 25 pounds frequently, the record does not affirmatively establish that Plaintiff is disabled. Remand is therefore appropriate.

ORDER

For the foregoing reasons, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: August 12, 2019

_____/S/_____
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE